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October 19, 2004

The Honorable Julie A. Robinson
405 U.S. Courthouse
444 SE Quincy
Topeka, Kansas 66683

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JULIE A. ROBINSON
U.S. DISTRICT JUDGE

Re: *Donald Irwin v. Principal Life Insurance Company*
Case No. 04-CV-04052

Dear Judge Robinson:

We represent Defendant Principal Life Insurance Company ("Principal") in the above-referenced matter. This letter is in regard to the pending and fully briefed Motion to Dismiss filed by Principal on July 20, 2004. At the suggestion of your office, we submit this letter in an attempt to point out the impossible position our client is in as it awaits the Court's ruling on this Motion and to request that the Court issue a ruling on this Motion at its earliest convenience.

To summarize our client's position, Principal provided life insurance benefits to the late Stephen Irwin, son of Plaintiff Donald Irwin and husband of Cathi Irwin, pursuant to a policy issued under an employee welfare benefit plan (the "Plan"). Following Stephen Irwin's death, Principal received competing claims for benefits under the policy from both Donald Irwin and Cathi Irwin. Exercising its discretion under the Plan, Principal reached a determination that Cathi Irwin was the proper recipient of the benefits due under the policy. Rather than appeal this decision under the Plan, Donald Irwin filed this action alleging common law claims for breach of contract and bad faith failure to pay. Because the Plan is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, which we believe preempts Donald Irwin's state law claims, Principal moved to dismiss Donald Irwin's claims.

Although Principal believes Cathi Irwin to be the proper recipient of the benefits, Donald Irwin's claims against Principal have resulted in Principal being unable to pay the benefits to Cathi Irwin without fear of potential double payment. At the same time, Principal has been advised by Cathi Irwin that she may also file suit against Principal for failure to pay the benefits, giving rise to Principal's fear of liability for failure to make prompt payment. Although Principal anticipates the need to interplead the money into the Court for final determination of these competing claims, it believes it is unable to do so in this action while this Motion remains pending. Therefore, we would ask that under these circumstances the Court expedite

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its review and ruling on this Motion, allowing our client to proceed quickly toward resolution of this matter.

Please advise if we can provide any further information to assist you.

Sincerely,

A handwritten signature in black ink that reads "Becky Jelinek". The signature is written in a cursive, flowing style.

Rebecca S. Jelinek

rsj/704280/0179160

cc: Phillip L. Turner, Esq.
Stanley R. Ausemus, Esq.